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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,902	10/20/2004	Ruixiang Zhang	KI7043272001	5038
23639	7590	04/27/2006	EXAMINER	
BINGHAM, MCCUTCHEN LLP THREE EMBARCADERO CENTER 18 FLOOR SAN FRANCISCO, CA 94111-4067			COE, SUSAN D	
			ART UNIT	PAPER NUMBER
			1655	

DATE MAILED: 04/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/511,902	ZHANG, RUIXIANG	
	<b>Examiner</b>	<b>Art Unit</b>	
	Susan D. Coe	1655	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 April 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-5 and 7-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-5 and 7-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. The amendment filed April 3, 2006, has been received and entered. The text of those sections of Title 35, U.S. Code, not included in this action can be found in a prior Office action.
2. Claims 2 and 6 have been cancelled.
3. Claims 7-16 have been added.
4. Claims 1, 3-5 and 7-16 are pending.

### ***Claim Rejections - 35 USC § 103***

5. Claims 1, 3-5, and 7-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over CN 1346648 A (English translation) - May 1, 2002 for the reasons set forth for claims 1-6 in the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that the examiner's "reason for not allowing Applicant to use his claimed priority date is fundamentally flawed." Applicant bases this statement on the fact that the current application is a 371 national stage application of a PCT. Applicant argues that a translation of the foreign priority should not be required because the examiner "is looking at the English translation of the Chinese counterpart application when she reads the present application, and there is no need for Applicant to provide another translation of the same to the PTO." However, the specification of the current application is a certified translation of the *PCT* application *not* a certified translation of the foreign priority document. There is no implied guarantee that the foreign priority document fully supports every claim. MPEP section 201.15 discusses that a translation of a foreign priority document is required to overcome a reference with an intervening date, in this case, a date that intervenes between the

Art Unit: 1655

foreign priority document and the filing date of the PCT application. In addition, CFR 1.55 discusses claims for foreign priority and does not exclude applications filed under 371 from the need to translate a foreign priority document to overcome an intervening reference. Thus, the need for a translation to overcome the reference is not considered “fundamentally flawed” reasoning on the part of the examiner. If the applicant is aware of applicable case law not discussed herein, it is suggested that applicant bring such case law to the attention of the examiner.

Thus, CN ‘648 is still considered to teach applicant’s claims for the reasons of record.

6. No claims are allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Art Unit: 1655

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (571) 272-0963. The examiner can normally be reached on Monday to Thursday from 9:30 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey, can be reached at (571) 272-0775. The official fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding can be directed to the receptionist whose telephone number is (571) 272-1600.

  
4-18-06

Susan D. Coe  
Primary Examiner  
Art Unit 1655